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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MARY L. COOK et al.,

Plaintiffs and Appellants,

v.

WARREN HSIAO et al.,

Defendants and Respondents.

B190840

(Los Angeles County
Super. Ct. No. NS015466)

APPEAL from an order of the Superior Court of Los Angeles County, Tracy Moreno Grant, Judge. Reversed and remanded with directions.

Law Offices of David Allen and David Allen for Plaintiffs and Appellants.

No appearance for Defendants and Respondents.

In an action to compel a stock cooperative's board of directors to hold a meeting, the trial court awarded attorney's fees and costs to one of the defendants. The plaintiffs appeal, claiming they were the prevailing parties. We agree and therefore reverse.

FACTS

Royal Palms Apartments, Inc. is a 164-unit stock cooperative operated by a Board of Directors.¹ Without shareholder consent, the Board decided to borrow \$2.5 million for plumbing repairs (using the real property for security). In protest, 90 of Royal Palms' 164 shareholders signed petitions to hold a shareholders meeting on November 7, 2005, for the purpose of removing the members of the Board.² The petitions were presented to the Board on October 28 (so there was plenty of time to give notice of the special meeting, which under the bylaws must be given at least seven but no more than ten days prior to the meeting). The Board cancelled the November 7 meeting and refused to reschedule it.

¹ "Stock cooperative" means "a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners' interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development" (Civ. Code, § 1351, subd. (m).) Subsequent undesignated section references are to the Civil Code.

² Royal Palms' bylaws provide: "It shall be the duty of the President to call a special meeting of the corporation . . . upon a petition signed by twenty percent of the members."

On November 15, Mary Cook (and several other shareholders included in our references to Cook) filed a petition for a writ of mandate to compel the Board to call a special meeting (the Board members named as respondents are included in our references to the Board). The Board thereafter called a meeting of the shareholders, and an election was held on November 29. On December 2, the Board wrote to Cook's lawyer, demanding dismissal of the writ petition on the ground that Cook had obtained the relief she sought. On December 12, Cook's lawyer filed a request for a dismissal of Cook's petition, and the dismissal was entered on December 19.

On December 21, Richard H. Gibson, one of the Board members, filed a motion for attorney's fees (§ 1354, subd. (c))³ and costs as the prevailing party (Code Civ. Proc., § 1032). Cook filed a similar motion on December 30, and each side filed opposition to the other's motion.

The trial court denied Cook's motion and granted Gibson's motion, noting that Cook had failed to obtain any relief against Gibson (who was a member of the Board when it decided to encumber the property but not at the time the petition was dismissed), and that the petition had been dismissed. The court ordered Cook to pay \$4,113.70 to Gibson for fees and costs.

³ Subdivision (c) of section 1354 provides, with regard to Common Interest Developments, that "[i]n an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs."

DISCUSSION

We agree with Cook that the trial court applied an incorrect standard vis-à-vis the fee award and that Cook, not Gibson, is entitled to fees and costs as the prevailing party. "Prevailing party," as used in section 1354, means the party who prevailed on a "practical level." (*Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574; *Elster v. Friedman* (1989) 211 Cal.App.3d 1439, 1443-1444 [a plaintiff is the prevailing party when the lawsuit is the catalyst motivating the defendants to provide the primary relief sought].) Because the petition caused the Board (and its members, including Gibson) to schedule the meeting, Cook was the prevailing party and entitled to her fees -- indeed, the Board's letter requesting dismissal of the petition conceded the point (and explains the absence of a respondent's brief on this appeal). (*Salaway v. Ocean Towers Housing Corp.* (2004) 121 Cal.App.4th 664, 669.)

DISPOSITION

The order denying Cook's motion for attorney's fees and costs and granting Gibson's motion for fees and costs is reversed, and the cause is remanded to the trial court with directions to enter a new order directing the Board of Directors to pay \$4,740 to Cook for attorney's fees and costs. Cook is awarded her costs of appeal.

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VOGEL, Acting P.J.

We concur:

ROTHSCHILD, J.

JACKSON, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.